IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3102 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO. LTD

Versus

RAMESHCHANDRA SHANKERLAL DECD.THRO' HEIRS BHARTIBEN RAMESH

Appearance:

MR PV NANAVATI for Petitioner

MS PAURAMI B SHETH for Respondent No. 1 to 3

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE J.R.VORA

Date of decision: 19/03/2001

ORAL JUDGEMENT (Per : MR.JUSTICE A.R.DAVE)

1. Heard learned Advocate Shri P.V. Nanavati appearing for the appellant Insurance Company and learned Advocate Ms. Paurami B. Sheth for opponents No. 1 to 3. Opponents No. 4 and 5 are Driver and Owner respectively and therefore learned Advocate Shri Nanavati seeks permission to delete them at this stage from this proceedings. Permission for deletion is granted so far as the present proceedings are concerned.

2. At the request of the learned advocates appearing for the parties, the Appeal is finally heard today.

3. In this Appeal, the appellant - Insurance Company has challenged the validity of the Award dated 15th April, 2000, passed below Exh. 5 in Motor Accident Claim Petition No. 780 of 1998. By virtue of impugned Award, a sum of Rs. 10,45,245/- has been awarded to opponents No. 1 to 3 who are the original claimants in the said petition. The award has been passed in pursuance of an application which was filed under the provisions of Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act").

4. It has been submitted by learned Advocate Shri Nanavati appearing for the appellant that it was not open to the Tribunal to award a sum of Rs. 10,45,245/- by way of compensation to opponents No. 1 to 3 in an application which was filed under the provisions of Section 163-A of the Act because the Tribunal has to determine the amount of award on the basis of the Second Schedule, which is forming a part of the Act. Learned Advocate Shri Nanavati has submitted that as per the said Schedule, income of the deceased cannot be taken as more than Rs. 40,000/- per annum. It has been submitted by him that the award is in the nature of an ad hoc award and the application filed under the provisions of Section 166 of the Act is still pending. In the circumstances, it was not open to the Tribunal to award the amount of compensation on the basis that the deceased was earning Rs. 16,347/- per month. He has therefore submitted that the award is required to be suitably modified.

4. On the other hand, learned Advocate Ms. Paurami Sheth appearing for opponents No. 1 to 3 i.e. original claimants has submitted that the details with regard to income given in the Schedule is only a guideline provided to the Tribunal and if it is established that the deceased was having more income, there is nothing to prevent the Tribunal from awarding higher amount of

compensation. She has further fairly conceded that so as to avoid the litigation, the claimants are prepared to accept lesser amount at present, but the said amount should be on the basis of the Schedule because according to her litigation is pending in the Hon'ble Supreme Court wherein it is to be decided whether at the time of filing of an application under Section 163A of the Act, it is open to the Tribunal to take into account the income of the deceased more than Rs. 40,000/- per year. It has been submitted by her that if ultimately the Hon'ble Supreme Court decides that it is open to the Tribunal to award compensation of higher amount, it should be open to the present claimants to approach this Court again.

4. We have heard the learned Advocates and looking to the facts of the case and in view of the concession given by the learned Advocate appearing for opponents No. 1 to 3, the Award is ordered to be modified. The amount shall be paid as under along with proportionate costs and interest thereon :

(i) Interim Award
(after deducting 1/3 amount) : Rs. 2,13,000.00

(ii) Funeral expenses : 2,000.00

(iii) Loss of consortium : 5,000.00

(iv) Loss of estate : 2,500.00

Total : Rs. 2,22,500.00

It would be open to opponents No. 1 to 3 to approach this Court if the Hon'ble Supreme Court decides that it is open to the Tribunal to award higher amount than the amount stated in the Schedule. The amount which has referred to hereinabove including interest and proportionate cost thereon shall be paid to the opponents in equal proportion by account pay cheques. The remaining amount i.e. Rs. 8,12,745/- along with interest and proportionate costs shall be deposited by the appellant within six weeks from today. The said amount shall be invested in any nationalised bank for a period of 5 years in the names of opponents No. 1 to 3 and Nazir of the Tribunal. The interest which might accrue on the Fixed Deposit shall be given to opponents No. 1 to 3 in equal proportion.

5. The Fixed Deposit Receipts shall remain in the custody of the Nazir of the Tribunal and no amount shall

be permitted to be borrowed on the security of the said Fixed Deposit.

6. In view of the above order, this First Appeal stands allowed to the aforesaid extent and the impugned Award is modified accordingly. No order as to costs. Decree be drawn accordingly. Record and Proceedings should be returned to the Tribunal forthwith. The sum of Rs. 25,000/-deposited by the appellant with this Court should be transmitted to the Tribunal forthwith. D.S. is permitted.

(A.R. Dave, J.)

(J.R. Vora, J.)

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